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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1993

Addendum

YEMEN*

[10 May 1993]

* On 22 May 1990, the People's Democratic Republic of Yemen and the Yemen Arab Republic merged into a single sovereign State, the Republic of Yemen. The People's Democratic Republic of Yemen had acceded to the Covenant on 9 May 1987. The Yemen Arab Republic was not a State party to the Covenant. For the initial report submitted by the Government of the People's Democratic Republic of Yemen, see document CCPR/C/50/Add.2, and for its consideration, see CCPR/C/SR.927 and SR.932 or Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), paras. 39-71.

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I. GENERAL

1. Yemen has a time-honoured history of civilization, typified by numerous human and cultural achievements, the traces of which can still be seen today.

2. Islam has always formed the basis of the intellectual and spiritual development of the Yemeni people; the principles and moral values of Islam, instilled over 14 centuries ago, made them positively aware that Almighty God exalted man and preferred him over all other creatures, for God said in His Holy Book: "We have bestowed blessings on the sons of Adam and guided them by land and sea. We have provided them with good things and exalted them above many of Our creatures."

3. This Islamic view of mankind is comprehensive; in Islam, all individuals are treated with the same concern, since everyone is equal. According to the words of the Apostle of God: "No distinction shall be made between an Arab and a non-Arab, except in terms of their piety". Islam provides the same protection for both the individual and the community as a whole; the individual's life, freedom, dignity, security and rights are as equally important as those of society as a whole. In the words of God: "Whoever kills a human being, except as a punishment for murder or other wicked crimes, shall be looked upon as though he has killed all mankind." These noble ideas and concepts of the worth and rights of the human person formed the basis of the past efforts and struggles of the Yemeni people to restore Yemen's position in history and civilization, the outcome of which was the achievement of Yemeni unification on 22 May 1990. This was an objective response to the circumstances of the age and its general and more outstanding features, which clearly highlighted the growing and eager desire of various nations and peoples to form large political and economic unions based on common interests, broad intellectual complementarity and a reconciliation of the individual and collective interests of mankind. Yemeni unification is now the armour of the Yemeni people as they enter the coming age and respond to the present world situation.

4. International political concerns are currently focused on democracy, freedom and respect for the human person. With the establishment of Yemeni unification, the Yemeni people acquired legal safeguards which eliminated oppressive relationships and national vacuums and abrogated the laws alienating people from their homeland which predominated during the time when the nation was divided into two.

5. With regard to implementation of the International Covenant on Civil and Political Rights in the Republic of Yemen, it is now over six years since Yemen acceded to the Covenant. During that time, the Covenant has played a leading role in the continuing efforts to promote public awareness of human rights which, together with public freedoms, form the basis of democratic society. These characteristics are inherent in the Yemeni individual for, in his view, they are more than vital; they are the very essence and spirit of life. Yemenis are free to work, express opinions, own property, travel and have political affiliations. For them, freedom is both created and bestowed by God. The freedom of the individual derives from the freedom of the community; people have equal rights and duties and are equal before the law and in the eyes of the authorities.

6. Yemen is submitting this report at a time when extensive preparations are under way for the parliamentary elections on 27 April 1993 with a view to furthering and developing the course of democracy in Yemen, broadening popular participation in the assumption of responsibility, protecting the freedom enjoyed by the Yemeni people, and instilling the concepts of the modern Yemeni State, concern for the Yemeni as an individual and the safeguarding of his rights.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PARTS I, II AND III OF THE COVENANT

Article 1

7. Concerning the right of peoples to self-determination, article 5 of the Yemeni Constitution stipulates that: "The State affirms its adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, the Pact of the League of Arab States and the generally recognized principles of international law."

Article 2

8. With regard to the prohibition of discrimination, article 27 of the Constitution stipulates that: "All citizens are equal before the law in regard to their public rights and obligations, without distinction among them on grounds of sex, colour, origin, language, occupation, social status or belief."

9. With regard to the right to legal redress, article 34 of the Constitution stipulates that: "Every citizen shall have the right to resort to the courts to protect his legitimate rights and interests. He shall have the right to submit complaints, criticisms and proposals, directly or indirectly, to the organs and institutions of the State."

10. The laws in force regulate all aspects of the system of judicial proceedings, three levels of which are specified under the Judicial Authority Act, while the Code of Criminal Procedure regulates the procedures and time-limits for the hearing of disputes and legal grievances. The law also requires the parties concerned to implement the orders, decisions and judgements handed down by the courts, as well as the measures needed to ensure compliance with those and other judgements with the aim of enabling the rightful party to receive his due.

Article 3

11. Concerning equality between men and women, the Constitution guarantees the enjoyment by women of all their political, economic, social and cultural rights, without distinction between them and men. The Constitution expresses this equality by using the word "citizen" in its general and all-embracing sense, which is understood to include both men and women, as illustrated in section 2, articles 26, 27, 29, 32, 34, 37 and 39, of the Constitution under the heading "Basic Rights and Obligations of Citizens".

Article 6

12. With regard to crime and punishment, the Constitution recognizes that every individual has an inherent lifelong right to life. Article 31 of the Constitution stipulates that: "Criminal liability is personal. There is no crime or punishment except as defined by law, and acts committed prior to the promulgation of the legislation under which they are designated as offences shall not be punishable. Every accused person is innocent until proved guilty by a final court judgement."

13. Article 2 of the Code of Criminal Procedure stipulates that: "An accused person is innocent until proved guilty. No penalty shall be imposed until a trial has been conducted, in accordance with the provisions of this Act, in which the right of defence is safeguarded. Any procedure which violates the rights of the accused person in regard to defence shall be totally invalid."

14. The death penalty is applied in Yemen within the strictest limits and in accordance with the provisions of the Islamic Shari'a. The Code of Criminal Procedure in force guarantees that persons sentenced to this penalty enjoy various safeguards, including the right to request pardon. Before such sentences are carried out, they must be submitted to the head of State, who uses his good offices with the prosecuting party with a view to having the sentence commuted.

15. The text of the articles on this subject in the Code of Criminal Procedure Act are as follows:

> "Article 464: A general amnesty, granted by legislative enactment, decriminalizes an offence. Public prosecution in respect thereof shall be inadmissible, and such actions may not be pursued further once they have been dismissed. If a conviction has been handed down, it shall be deemed null and void. Pardon from penalty shall be granted by a decision of the head of State on the basis of a recommendation by the Minister of Justice subsequent to a final judgement. The pardon shall remit the penalty in whole or in part, commute it to a lighter penalty or include a supplementary penalty.
>
> "Article 406: Sentences of retribution (qasas) which entail the loss of life or limb, as well as sentences of doctrinal punishment (hadd), shall be submitted to the head of State, through the Minister of Justice, within one month of the date when they become final, unless there is a justification for delay. They may be enforced only after their ratification.
>
> "Article 410: Neither the death sentence nor sentences of retribution (qasas) and doctrinal punishment (hadd) which entail the loss of life or limb shall not be enforced on official holidays or on holidays particular to the religion of the person sentenced."

16. Article 410, paragraph 2, stipulates that: "Enforcement of sentence against a pregnant woman shall be suspended until she has given birth, and in the case of a woman who is nursing until the child is weaned over a two-year period, provided that the child has a guardian. Such women shall be imprisoned until the time when the sentence is enforced."

Article 7

17. With regard to the prohibition of torture and cruel treatment or punishment, article 33 of the Constitution stipulates that: "Degrading and inhuman forms of treatment shall not be permitted when executing penalties, and no legislation permitting such treatment shall be enacted."

Article 8

18. Concerning the right to work and the prohibition of slavery, article 21 of the Constitution stipulates that: "Work is a right, an honour and a necessity for the development of society. Every citizen shall have the right to engage in the work of his choice, within the limits of the law, and forced labour shall not be imposed on citizens unless required by law for the performance of a public service in return for equitable remuneration."

19. Article 19 of the Constitution stipulates that: "The State shall guarantee equal political, economic, social and cultural opportunities for all citizens and shall promulgate legislation to that end."

20. Article 9 of Labour Act No. 5 of 1970 likewise stipulates that: "Yemenis shall have the equal right to work."

Article 9

21. With regard to rights and liberties in connection with human dignity, article 32 of the Constitution stipulates as follows:

> "(a) The State shall guarantee the personal freedom of citizens and shall safeguard their dignity and security. The law shall determine the circumstances under which a citizen may be deprived of his liberty, and no one may be deprived of his liberty except by a judgement from a competent court.
>
> "(b) Except in cases of flagrante delicto, no one may be arrested, searched or detained without a warrant issued by a magistrate or the Department of Public Prosecutions, in accordance with the law, where such arrest, search or detention is necessitated by the requirements of an investigation or the maintenance of public order and security. No one shall be placed under surveillance or investigated except in the manner prescribed by law and the dignity of any person whose liberty is in any way restricted must be safeguarded. The practice of physical or mental torture is prohibited, as is the extraction of a confession by force during investigations. Any person whose liberty is restricted shall have the right to refrain from making any statements except in the presence of his lawyer, and no one may be imprisoned or detained in a place other

than those subject to the Organization of Prisons Act. Corporal punishment and inhuman treatment at the time of arrest or during the period of detention or imprisonment shall likewise be prohibited.

"(c) Any person who is provisionally arrested on suspicion of the commission of a crime must be brought before a magistrate within a maximum of 24 hours from the time of his arrest. The magistrate must inform him of the reasons for the arrest, question him and permit him to make statements in his defence and lodge any protests. He must immediately issue a substantiated order for his remand in custody or release him. The person shall under no circumstances be held in detention for a period longer than that authorized unless a further judicial order is issued.

"(d) When any person is arrested for any reason, an individual designated by him must be notified immediately. The same shall also apply on the issue of any judicial order for his further remand in custody. If the person arrested is unable to designate anyone, notification must be given to his relatives or whomsoever it may concern.

"(e) The law shall prescribe penalties for any person who infringes the provisions of any of the paragraphs of this article. Appropriate compensation shall also be determined for damage which a person may suffer as a result of such infringement."

22. The Code of Criminal Procedure contains various safeguards, including the stipulation that an investigator of serious offences may not question the accused person or confront him with other accused persons or witnesses until his lawyer, if he has one, has been invited to attend. Furthermore, he must notify the accused person of his legal right to remain silent in the absence of his lawyer.

23. It is also prohibited by law to remand an accused person in custody until he has been questioned and a number of conditions have been satisfied, including the existence of sufficient evidence of the charge. Further conditions are that the offence must be legally punishable by a term of imprisonment of not more than three months; the accused person must be over 15 years of age; he may be remanded in custody only by an order from a competent member of the Department of Public Prosecutions, written on official notepaper; and he may be remanded in custody only in the places specifically designated for that purpose.

24. In cases involving serious offences, the law permits the Department of Public Prosecutions, either on its own initiative or at the request of the accused person who is remanded in custody, to order the latter's release at any time, with or without bail, provided that he undertakes to present himself whenever so requested and does not refuse execution of any sentence which may be handed down against him.

25. In cases involving minor offences, the Department of Public Prosecutions must release the accused person, provided that he has a known place of domicile in the country. As already stated, the right of the accused person to receive compensation for any damage that he may suffer as a result of arbitrary procedures is also guaranteed under the Constitution.

Article 10

26. Concerning the treatment of prisoners who are deprived of their liberty, article 3 of the Code of Criminal Procedure stipulates that: "A person may be arrested or imprisoned only by order of the competent authorities as designated in this Code. He must be treated in a manner which preserves his human dignity and may not be harmed physically or mentally. Any statement which an accused person or witness is proved to have made under pressure, duress or threat shall be deemed null and void."

27. Article 4 of the Code stipulates that: "Any person who is aware that an individual has been arrested and imprisoned without legal justification or in a place other than those specially designated for such purpose must duly inform a member of the Department of Public Prosecutions, who must take prompt action to release the person who has been wrongfully imprisoned. However, if it is established that the person was imprisoned with legal justification, he shall be immediately moved to a penal institution. In all cases, a report on the action taken shall be drawn up."

28. With regard to the categorization of prisoners, article 32 of the Organization of Prisons Act No. 48 of 1991 stipulates as follows:

> "A place known as an admission centre shall be provided in the prison. Its function shall be to interview prisoners upon their entry into prison. Prisoners shall be categorized as follows:
>
> 1. First offenders shall be isolated from prisoners with previous convictions;
>
> 2. Prisoners who have committed extremely serious social offences shall be isolated;
>
> 3. Foreign prisoners shall be isolated from Yemeni prisoners;
>
> 4. Juveniles shall be isolated from adult prisoners;
>
> 5. Female prisoners shall be isolated from male prisoners."

29. Article 97 of the Code of Criminal Procedure stipulates that: "An arrested person shall be detained in a place separate from that provided for convicts. He shall be presumed innocent and shall not be harmed physically or mentally with a view to extracting a confession from him or for any other purpose."

30. With regard to the treatment of prisoners in penal institutions, article 3 of the Organization of Prisons Act No. 48 of 1991, which specifies the objectives, stipulates that the treatment of prisoners inside prison aims

to achieve "the reform, correction and rehabilitation of prisoners through the use of all means and influences, both educational and medical, as well as vocational training, social services, sports, cultural and recreational activities, and the creation in prisoners of the desire and inclination to lead a respectable life as worthy citizens."

31. Section 4 of the aforesaid Act regulates the principles for the reform, rehabilitation and vocational training of prisoners; article 12 stipulates that the prison administration must organize prison work in conditions which approximate work conditions outside prison in terms of type of work, manner of performance and the kind of tools and equipment used.

32. Article 13 stipulates that work should be part of the execution of the penalty by prisoners and not part of the penalty itself, and that work should be regarded as necessary in order to preserve the constitution of the prisoner and the interests of society. Articles 14 and 15 stipulate that daily working hours should not be less than four hours nor more than six hours. The employment of prisoners is also forbidden on official and weekly holidays and in the case of prisoners who are remanded in custody. Article 17 stipulates that prison work must aim to rehabilitate the prisoner and provide him with vocational training in order to promote his social reintegration and transform him into a worthy citizen.

33. Article 19 stipulates that a prisoner has the right to receive a wage for the work which he performs and to receive compensation for occupational injuries in accordance with the Labour Act. Articles 20, 21 and 22 of the aforesaid Act No. 48 stipulate that prisoners must have access to appropriate facilities and means to enable them, and particularly those who are illiterate, to further their studies during their time in prison. Prisoners who have the desire and potential to pursue their studies must be given the opportunity to do so. At least one preacher (spiritual guide) must be assigned to each prison with a view to creating the desire for moral rectitude among prisoners and encouraging them to perform their religious duties. Each prison must have at least one specialist in the social sciences and psychology and must develop cultural programmes to occupy prisoners during their leisure time. Prisoners must also be given the opportunity to engage in sports and recreational activities.

34. Section 5 of the Act regulates the health care of prisoners; each prison administration is expected to pay due attention to prison health and ensure that prisoners have access to medical and preventive treatment and care and to appoint medical specialists for that purpose.

35. Article 11, paragraph (a), of the Juveniles Act No. 24 of 1992, stipulates that: "A juvenile under the age of 12 may not be kept in a police station or other security establishment. His guardian or trustee or another trustworthy person must be requested to assume responsibility for his custody, failing which he must be placed in the nearest juvenile rehabilitation home for a period of not more than 24 hours. If his release constitutes a danger to himself or to third parties, he must thereafter be referred to the Department of Public Prosecutions for consideration of his case in accordance with the provisions of this Act."

36. Paragraph (b) of the same article stipulates that: "If necessary, a juvenile who has reached the age of 12 may be kept in any police station for up to 24 hours, provided that he is kept in a special place which precludes his mixing with other detainees who are older than him."

37. Article 13 of the Act stipulates that juvenile cases must be regarded as urgent cases which should be dealt with rapidly by the judicial authorities, and that the release of juveniles at any stage of the investigation or trial is the preferable course of action.

38. Under article 14, it is forbidden to maltreat juveniles, to restrain them with chains or manacles and to resort to physical coercion when enforcing sentences handed down against them. The Act also stipulates that special juvenile courts must be established.

Article 11

39. With regard to the inadmissibility of imprisoning an insolvent debtor, article 372 of the Civil Code (Act No. 19 of 1992) stipulates that: "If the insolvency of a debtor is established by a court judgement, his creditor shall be barred access to him until his solvency is established."

40. Article 368 of the Code stipulates that: "If a debtor is insolvent, he shall not be placed in debt bondage, nor shall he be obliged to accept a gift or take blood money for a wilful felony for which retribution (gasas) is the prescribed penalty. A woman who is insolvent shall not be obliged to enter into marriage in order to settle her debt from the bride-price or to enter into marriage at a bride-price commensurate with that received by her peers, since she may enter into a marriage at a lesser bride-price if she so wishes."

41. Article 367 stipulates that: "If a debtor is solvent, his creditor may seek his imprisonment in order to compel him to settle his debt." A contrario sensu, this clearly implies that an insolvent debtor cannot be imprisoned in order to compel him to settle his debt.

Article 12

42. Concerning the right to liberty of movement and residence, article 38 of the Constitution stipulates that: "Every citizen shall be guaranteed freedom of movement from one place to another on Yemeni territory. Movement may not be restricted, except in the instances prescribed by law with a view to ensuring the security and safety of citizens. Freedom to enter or leave the Republic shall be regulated by law and no citizen may be expelled from Yemeni territory or prevented from returning thereto."

Article 13

43. Concerning the residence of aliens, Act No. 47 of 1991 provides for the entry and residence of aliens and regulates the process of their entry into and movement in the territory of the Republic of Yemen. Only purely statutory restrictions, recognized in many other countries of the world, are stipulated.

44. Article 31 of the Act prohibits the expulsion of any alien unless his presence threatens the internal or external security and integrity of the State, its national economy and public health or public morals, or unless he is dependent on support from the State. Expulsion must be carried out by a decision of the Minister of the Interior following submission of the matter t the Expulsion Committee.

Article 14

45. With regard to equality in the field of litigation, reference has alrea been made to article 27 of the Constitution, which stipulates that all citizens are equal before the law. Article 2 of the Judicial Authority Act No. 1 of 1990 stipulates that: "Litigants shall be equal before the law, regardless of their status and circumstances."

46. Article 1 of the Act stipulates that: "The judicial authority is independent in the discharge of its functions and, in their administration of justice, judges are independent and subject to no authority other than that o the law. No body may in any way interfere in a court case or in a matter of justice. Such interference shall be regarded as an offence punishable by law and prosecution in respect thereof shall not be statute-barred."

47. Article 5 stipulates as follows:

> "(a) Court hearings shall be held in public, unless the court decides that they should be held in camera in order to safeguard public order and morals. In all cases, judgement shall be pronounced at a public hearing.
>
> "(b) Pleading shall be conducted orally or in writing, unless the law stipulates either form in particular."

48. Article 114 of the Code of Procedure (Act No. 28 of 1992) stipulates that: "Pleas shall be heard in public unless the court decides, at its own discretion or at the request of the opposing parties concerned, to hear them in camera in order to safeguard public order or in consideration of public morals or the sacrosanct nature of family life."

49. Article 20 of the Juvenile Welfare Act No. 24 of 1992 stipulates as follows:

> "(a) A juvenile shall be tried in camera; his relatives, witnesses, lawyers, social workers and persons specially authorized by the court may attend his trial.
>
> "(b) Where it deems necessary, the court may order the removal of the juvenile from the hearing after he has been questioned, or the removal of any of the persons referred to in the foregoing paragraph.
>
> "(c) If the juvenile is removed from the hearing, the court may not order the removal of his lawyers or the social worker. Moreover, the court may not deliver a conviction until the juvenile has been apprised of the proceedings that have taken place in his absence.

"(d) The court may exempt the juvenile from attending the proceedings in person if it believes that his interest so requires and that it is sufficient for his guardian or trustee to appear on his behalf, in which case the judgement shall be deemed to have been handed down in his presence."

50. As for the right of every accused person to a fair trial, article 21 of the Constitution stipulates that every accused person is innocent until he is proved guilty. As already stated, court hearings must be held in public in the manner stated.

51. Article 99 of the Code of Criminal Procedure stipulates that: "Any person who is arrested shall be immediately notified of the reasons for the arrest. He shall have the right to examine the arrest warrant, to contact whomsoever he believes should be informed of what has happened and to seek the assistance of a lawyer. He must also be promptly informed of the charge brought against him."

52. Article 153 of the Code of Criminal Procedure stipulates that the examining magistrate must explain the charge against the accused and confront him with the proofs and evidence on which the charge against him is based. The examining magistrates must ensure that the accused enjoys his full rights of defence, in particular his right to refute and contest the evidence against him. The accused has the right at all times to defend himself or to request that any investigation procedure be carried out.

53. Article 154 of the Code stipulates that the accused must not be compelled to take an oath or to answer questions, his declining to do so not being regarded as proof of the charge brought against him. It is also prohibited to use deception or violence against the accused or in any way bring pressure to bear on him with a view to inducing or forcing him to confess.

54. Article 278 of the Code stipulates that: "If the accused or any of the witnesses is not familiar with the Arabic language, the court must seek the services of an interpreter".

55. Article 279 of the Code stipulates that a person who is a witness or a member of the court hearing the case may not be chosen as an interpreter, even with the consent of the opposing parties. If this condition is violated, the proceedings are deemed invalid.

56. With regard to the need for an early trial of an accused person, the Constitution stipulates that the accused person must be brought before a magistrate within a maximum of 24 hours from the time of his arrest.

57. Under article 250 of the Code of Criminal Procedure, a charge against an accused person who, on account of the charge, is in detention when he is brought to trial is regarded as an urgent matter on which the court must reach a swift decision. Reference has already been made to the right of an accused person to conduct his own defence or to avail himself of the services of a defence lawyer of his choice, as provided for under article 32, paragraph (b), of the Constitution.

58. Article 253 of the Code stipulates that: "The case shall be examined at a hearing held within one week of its referral to the competent court, which must, as far as possible, examine the case at successive hearings and reach a swift decision thereon."

59. Article 291 of the Code stipulates that the court must hear the witnesses for the prosecution. When a witness has completed his testimony, the judge must ask him if the accused person present is the person to whom his testimony refers and must then ask the accused if he has any objections to the testimony. The witness is then questioned by the prosecution, followed by the private claimant, the civil plaintiff, the accused and the person bearing civil responsibility in that order.

60. Article 276 stipulates that the accused and other litigants have the right before the closure of pleading to request that their witnesses be heard, that any other procedure be taken and so forth.

61. Article 297 of the Code stipulates that: "The court does not have the right to question the accused without his consent".

62. Article 299 of the Code stipulates that: "The accused shall not be liable to punishment if he refuses to reply to questions put to him or if the reply which he gives is misleading. Such replies shall be regarded as a denial which is to be followed by the hearing of the evidence."

63. Concerning the right of an accused person to resort to a higher court, article 7 of Judicial Authority Act No. 1 of 1990 specifies three levels of litigation before the following courts:

1. The Supreme Court;

2. The court of appeal;

3. The court of first instance.

64. The Code of Criminal Procedure, volume 3, regulates the rules, procedures and time-limits for appeal against interlocutory judgements, appeal to the Supreme Court and review applications.

65 Article 394 of the Code stipulates that: "If the person sentenced applies for compensation for damage which he has suffered as a result of an earlier judgement, the court may award him compensation in the judgement acquitting him."

66. Article 395 stipulates that: "The State shall be responsible for payment of the compensation awarded and may collect the same from the private claimant, the perjured witness or the expert who caused the conviction to be pronounced."

67. Article 400 stipulates that, in the event of an appealed judgement being quashed or amended, the person sentenced must have his entitlements restored in accordance with the general rules.

68. Concerning the prohibition of retrial once a final judgement has been handed down, article 326 of the Code of Criminal Procedure stipulates that: "A criminal action brought against an accused person and the offences of which he stands charged in such action shall lapse following the pronouncement of a final judgement therein."

69. Article 327 of the Code stipulates that: "Once a final judgement has been pronounced in a criminal action, it is not permissible to institute further such proceedings on the basis of new evidence, new circumstances or a change in the legal definition of the offence."

Article 15

70. With regard to application of the law that is most conducive to the interests of the accused, article 31 of the Constitution stipulates that: "Acts committed prior to the promulgation of the legislation under which they are designated as offences shall not be punishable".

71. Article 312 of the Code of Criminal Procedure stipulates that: "If the court finds that the act is unproven and unpunishable by law, it shall acquit the accused person and release him if he is in detention by reason of the said act."

72. Article 313 of the Code stipulates that: "If it becomes clear to the court that, at the time of commission of the act, the accused person was in a state of diminished responsibility or that there are impediments to punishment, it shall pronounce judgement to that effect."

73. Article 4 of the draft Penal Code stipulates that: "The law in force at the time of the commission of the offence shall be applied. However, if one or more laws have been promulgated following the occurrence of the offence and before final judgement has been handed down, the law that is most conducive to the interests of the accused shall be applied."

74. If, following final judgement, a law is promulgated which renders unpunishable the offence for which the criminal was sentenced, execution of the sentence is halted and its criminal effects are terminated. However, if, for a specific period, a law is promulgated which designates an act or omission as an offence, or which increases the prescribed penalty, the expiration of the said period does not preclude the application of that law to offences perpetrated during the period in question.

Article 16

75. With regard to the legal personality of the individual, article 37 of the Civil Code (Act No. 19 of 1992) stipulates that: "The personality of the individual shall commence at the time when he is born live and shall end at his death."

76. Article 46 of the Code stipulates that: "In personal dealings an individual shall be known by his given name and the names of his father and grandfather, or by a family name which distinguishes him."

Article 17

77. With regard to the prohibition of interference with a person's privacy or family affairs, article 23, paragraph (a), of the Constitution stipulates that: "The State shall guarantee the personal freedom of citizens and shall safeguard their dignity and security ..."

78. Article 35 of the Constitution stipulates that: "Homes and places of worship and learning shall be inviolable and may not be placed under surveillance or searched except in the circumstances prescribed by law."

79. Article 36 of the Constitution further stipulates that: "The freedom and confidentiality of communications by post, telephone, telegraph and all other media shall be guaranteed. They may not be placed under surveillance, searched, divulged, delayed or seized, except under the terms of a court order or in the circumstances prescribed by law."

80. The legal aspect of this subject is covered by articles 5, 6, 7 and 8 of the Code of Criminal Procedure, the text of which reads as follows:

> "Article 5: Homes are inviolable and may be placed under surveillance or searched only by order of the Department of Public Prosecutions, in accordance with this Code, when a person residing in the house to be searched has already been charged with the commission of an offence for which the minimum penalty is imprisonment, or with being an accomplice in the commission thereof, or if evidence exists to prove that he is in possession of items connected with the offence. In all cases, the search warrant must be substantiated.
>
> "Article 6: The inviolability of the private life of a citizen may not be breached in circumstances other than those permitted under this Code. The commission of any of the following acts shall be deemed to constitute a breach thereof:
>
> 1. The interception, recording or transmission of conversations conducted in a private place or by telephone or any other type of apparatus;
>
> 2. The use of any type of apparatus to take or transmit a picture of a person in a private place;
>
> 3. The examination or seizure of letters, correspondence or telegrams.
>
> "Article 7: Restrictions shall not be placed on the freedom of assembly, movement, residence and passage of citizens except in accordance with the provisions of this Code.
>
> "Article 8: By way of derogation from the provisions of article 6, there shall be no abatement of the right for an action to be heard concerning offences which undermine the freedom or dignity of citizens or which constitute an assault on the freedom of private life."

Articles 18 and 19

81. With regard to freedom of thought and expression, article 26 of the Constitution stipulates that: "Every citizen shall have the right to participate in political, economic, social and cultural life. The State shall guarantee freedom of thought and expression of opinion orally, in writing or in graphic form, within the limits of the law."

82. Article 18 of the Constitution stipulates that: "The State shall guarantee freedom to conduct scientific research and produce literary, artistic and cultural works which are in keeping with the spirit and aims of the Constitution, and shall provide the facilities needed to that end. It shall likewise furnish every assistance to promote the arts and sciences, and encourage scientific and artistic creativity and technical innovation and protect the results of the same."

83. Articles 3, 4, 5, and 6 of the Press and Publications Act No. 25 of 1990 contain various safeguards of freedom of expression of opinion and thought. The text of these articles reads as follows:

> "Article 3: Citizens shall have the right to freedom of knowledge, freedom of the press, freedom of expression and communication and freedom of access to knowledge and information in order to guarantee their ability to express their opinions orally, in writing, in pictorial or graphic form or through any other medium. Such right shall be guaranteed to all citizens in accordance with the provisions of the Constitution and the stipulations contained in the provisions of this Act.
>
> "Article 4: The press shall be independent and shall be free to fulfil its mission of serving society, forming public opinion and expressing trends in public opinion by various means consistent with the Islamic religion, the constitutional principles of society and the State, the aims of the Yemeni revolution and the strengthening of national unity. Its activity may not be opposed except in accordance with the provisions of the law.
>
> "Article 5: The press shall be free to publish and to receive news and information from their sources, while remaining liable for what it publishes, within the limits of the law.
>
> "Article 6: The rights of journalists and the holders of other copyrights shall be protected and they shall enjoy the legal safeguards needed for the exercise of their profession. Their right to express themselves without being called to account in an illegal manner is guaranteed by law, provided that such expression does not infringe the provisions of the law."

Article 20

84. With regard to the prohibition of propaganda for war or hatred, article 5 of the Constitution stipulates that: "The State affirms its adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, the Pact of the League of Arab States and the generally recognized rules of international law."

85. The sixth aim of the Yemeni revolution likewise calls for "compliance with the charters of the United Nations and international organizations and adherence to the principles of positive neutrality, non-alignment, and endeavours to establish world peace and promote the concept of peaceful coexistence among nations."

86. With regard to article 20, paragraph 2, of the Covenant concerning prohibition of the advocacy of national or religious hatred, article 27 of the Constitution stipulates that: "All citizens are equal before the law and in regard to their public rights and obligations. No distinction shall be made among them on grounds of sex, colour, origin, language, occupation, social status or belief."

87. Article 8 of the Political Parties and Organizations Act No. 66 of 1991 prohibits the establishment or continued activity of any political party or organization which has a regional, tribal, factional, class or occupational basis, or which discriminates among citizens on grounds of sex, origin or colour, or which opposes religion or stigmatizes other political parties or organizations or society and its individual members as heretical, or which claims to represent religion, patriotism, nationalism or revolutionary ideals. It also prohibits parties and organizations from resorting to the use of any form of violence or threatening or inciting violence during the course of their activities, and from including of anything of that nature in their political programmes or publications.

Articles 21 and 22

88. With regard to the right to assemble, form associations and establish trade unions, article 29 of the Constitution stipulates that: "Citizens throughout the Republic shall have the right to organize themselves politically and professionally and in trade unions, and to form scientific, cultural, social and national organizations and federations which serve the aims of the Constitution, provided that such organization does not contravene the provisions of the Constitution. The State shall guarantee this right, adopt all the measures needed to enable citizens to exercise it, and safeguard all the freedoms of political, trade-union, cultural, scientific and social institutions and organizations."

89. Under article 1 of Legislative Decree No. 11 of 1963 concerning the regulations and provisions governing the activity of associations, an association is defined as follows: "For purposes of the application of the provisions of this Act, any non-profit-making group which is regularly organized for a specified or unspecified period and which is composed of individuals or bodies corporate shall be regarded as an association."

90. In addition, it goes without saying that the aforesaid Legislative Decree imposes no restrictions whatsoever on the right to establish or form associations, except in the cases specified in article 2, such as the illegitimacy of the purpose for which they are established if they are likely to prejudice the country's integrity or political system or if they are established in a manner contrary to the provisions of the laws in force or to public morals.

91. The Labour Act No. 5 of 1970 contains a special section (section 9) on the establishment of trade unions, which contains all the regulations and provisions governing such activity. For example, article 129 stipulates that: "Workers and employees who belong to a single profession or industry or to professions or industries which are independent, identical, similar or related or which have specific types of production in common may establish a general trade union".

92. Article 134 likewise guarantees that every worker or employee who has reached the age of 16 has the right to join an occupational or professional trade union, and the right to withdraw therefrom whenever he wishes, without restriction or condition. The remaining articles in that section stipulate the right of every general trade union to establish a trade-union branch in towns and to form trade-union committees in each enterprise or labour establishment affiliated to it.

Article 23

93. With regard to the right to found a family, the Constitution regards the family as the cornerstone of society which is rooted in religion, morality and patriotism. Accordingly, the Personal Status Act No. 20 of 1992 recognizes the right of men and women to marry and found a family. Article 6 of the Act stipulates that: "Marriage is a relationship between two spouses according to the terms of a legal contract under which the woman becomes lawfully accessible to the man. It is based on good conjugal relations and its purpose is the foundation of a family". Article 10 stipulates that: "Any contract based on coercion of either of the spouses is null and void". Under article 15: "No one is permitted to enter into marriage with a young male or female person under 15 years of age". Article 18, paragraph 2, further stipulates that: "If a woman's guardian prevents her from marrying, the judge shall order him to give her in marriage and, if he refuses to do so, the judge shall give her in marriage, at the bride-price normally received by her peers, to a man whose social standing is commensurate with her own". Under article 19: "The guardian shall be deemed to have prevented a marriage if he refuses to give in marriage an adult woman of sound mind who is willing to marry a man whose social standing is commensurate with her own". Under article 23: "The woman must give her consent. In the case of a virgin, this shall be signified by her silence and, in the case of a woman who is not a virgin, by her verbal assent".

94. The mutual rights and obligations of the spouses during their marriage are set forth in articles 40 and 41 of the above-mentioned Act:

"Article 40: A husband has a right to his wife's obedience in matters affecting the family's interests, particularly with regard to the following:

(i) She must move with him to the conjugal home, unless she stipulated in the contract that he must allow her to remain in her home or her family's home, in which case she must permit him to live with her and enjoy access to her;

(ii) She must permit him to have licit intercourse with her, in private, when she is in a state of ritual purity;

(iii) She must obey his orders and perform her work in the conjugal home, like other women;

(iv) She must not leave the conjugal home without his permission, although the husband has no right to prevent his wife from going out for a legally valid or generally acceptable reason which is not prejudicial to honour or to her duties towards him. In particular, she may go out to attend to her property interests or discharge her employment-related duties. If the woman wishes to assist her aged parents when there is no one else to take care of either or both of them, this shall be deemed to be a legally valid reason."

"Article 41: The husband has the following obligations towards his wife:

(i) He must provide a legally adequate dwelling of an appropriate standard;

(ii) He must provide an appropriate standard of maintenance and clothing;

(iii) If the husband has more than one wife, he must treat them all equitably;

(iv) He must not interfere with her private property;

(v) He must not cause her any material or moral harm."

95. With regard to the reciprocal rights of the spouses in the event of a dissolution of their marriage, Yemeni law to a certain extent gives precedence to the woman's rights on numerous social and moral grounds. Those rights include the right to compensation in accordance with the provisions of article 71 of the above-mentioned Act, which stipulates that: "If a man divorces his wife in a manner which, in the judge's opinion, is arbitrary, without reasonable justification and likely to leave her in a state of distress and destitution, the judge may order the husband to pay her compensation, depending on his circumstances and the arbitrariness of his act, up to an amount equivalent to one year's maintenance for women of her social

standing, in addition to the maintenance payable during the waiting period that she must observe before remarrying. This compensation shall be payable, at the judge's discretion, either as a lump sum or in monthly instalments, as the circumstances require".

96. She also has the right to custody of her children, as will be explained below, and is entitled to receive maintenance from her former husband during the waiting period that she must observe after her divorce before marrying another person so that it can be ascertained that she is not pregnant by her former husband.

97. With regard to the rights of the children on dissolution of marriage, the law guarantees the right of custody. Article 138 of the Personal Status Act defines this as follows: "Custody means the care and upbringing of a young person who is unable to manage his or her own affairs, and protection of the said young person from harm or danger, in a manner consistent with the rights of his or her guardian. It is an inalienable right of the child which, if precluded by any particular circumstances, is nevertheless restored when those circumstances change".

98. According to article 139: "The duration of custody is nine years in the case of a boy and 12 years in the case of a girl, unless the judge decides otherwise in the interests of the child".

99. Under article 141: "The mother has a greater right to custody of her child, provided that she is found fit to undertake that custody, and she cannot forfeit this right unless the child accepts another person, failing which she is obliged to undertake custody of her child, since this is the child's right".

100. Article 184 stipulates that: "When a male or female child becomes more self-reliant, the child shall be given a choice between his or her father or mother, in the event of a dispute between the latter, with a view to safeguarding the child's interests. In the event of a dispute between guardians other than the father and mother, the judge shall choose the person most likely to further the child's interests, after ascertaining the child's views in this connection".

Article 24

101. With regard to the rights of children in general vis-à-vis their families and society, the Government of the Republic of Yemen is showing due concern for this aspect. The Government has endeavoured to create a suitable environment and conditions for the development of a modern Yemeni society imbued with a spirit of solidarity, in which all persons enjoy all their rights and freedoms on an equal footing, through the adoption of numerous measures designed to ensure that the younger generation is cared for and protected from delinquency. The legislative measures that have been promulgated to protect children and ensure their upbringing and education and the development of their talents and capabilities at the various stages of their growth are illustrated by the following:

(a) Every child has a right to be weaned, nurtured and maintained by his or her parents and other relatives. Reference has already been made to numerous provisions of the Personal Status Act concerning suckling and custody. Article 149 of the above-mentioned Act defines maintenance as the food, clothing, shelter and medical treatment, etc., which a person has a financial obligation to supply to another person for a specific reason or by virtue of a specific family relationship. Article 158 stipulates that the obligation to maintain a destitute or mentally ill young child is borne by the father, or the most closely related ascendant, provided that he is financially solvent or, if destitute, capable of earning a living. If the father or other ascendant is destitute and unable to earn a living, the maintenance obligation is borne by the mother, provided that she is financially solvent, or by other relatives;

(b) The right to education is a public right guaranteed to all individuals under the terms of article 37 of the Constitution, which stipulates that: "All citizens have a right to education, which the State shall provide through the establishment of various schools and cultural and educational institutions. In particular, the State shall cater for the welfare of the younger generation, protect it from delinquency, ensure its religious, intellectual and physical upbringing and ensure appropriate conditions for the development of its talents in all fields";

(c) Every child has a guaranteed right to enjoy the social, educational, health, recreational and other services provided by the State;

(d) Orphan children who are indigent, disabled or without a family provider have a right to care, upbringing and training, which the State safeguards through the establishment of institutions or boarding facilities in which they can find shelter. The State has also established social welfare institutions for the care and rehabilitation of juvenile delinquents or potential delinquents and is providing the resources and financial appropriations needed for the administration and operation of these social facilities and the maintenance of their inmates (under the Social Security and Juveniles Acts);

(e) At birth, every child has the right to be entered in the civil status register. The child's right to be given a name by which he or she will be known is also guaranteed by law in accordance with the provisions of Legislative Decree No. 23 of 1991, concerning civil status and civil registration. Articles 20 and 21 of section IV of that Act regulate the registration of births and stipulate that the child's father, any adult relative or the director of the hospital, maternity clinic or other institution in which the birth takes place, must notify the birth to the nearest civil registry within 60 days. The other articles in that section cover some of the procedural and organizational requirements that must be observed after such notification. In this connection, it goes without saying that the 60-day time-limit specified in article 20 for the notification of the birth is regarded, from the legal standpoint, as a statutory time-limit the expiration of which does not entail forfeiture of the child's right to subsequent registration. In fact, this right is not extinguished and can be legally enforced at any time in accordance with an explicit provision contained in article 30 of the above-mentioned Legislative Decree No. 23;

(f) Yemeni law respects every child's right to hold a nationality. Due regard for this humanitarian aspect is shown in article 28 of the Constitution, which stipulates that: "Yemeni nationality shall be regulated by law. No Yemeni shall be deprived of his nationality under any circumstances whatsoever, nor shall it be withdrawn from a person who has acquired it except as provided by law".

102. Article 3 of the Yemeni Nationality Act No. 6 of 1990 stipulates that:

"Yemeni nationality shall be enjoyed by:

(a) Any person born to a father holding this nationality;

(b) Any person born in Yemen to a mother holding this nationality and a father who is stateless or of unknown nationality;

(c) Any person born in Yemen to a mother holding this nationality and a father whose paternity has not been legally established;

(d) Any person born in Yemen to unknown parents. A foundling discovered in Yemen shall be deemed to have been born there failing proof to the contrary;

(e) Any emigrant who legally held this nationality at the time of his departure from the national territory and who has not legally relinquished this nationality."

Article 25

103. The right to take part in the conduct of public affairs and to have access to public service is guaranteed to all citizens, without any discrimination or distinction among them.

104. The constitutional and legislative provisions concerning these rights are reviewed below:

(a) Article 4 of the Constitution: "The people are the source and holder of authority, which they exercise directly, through referendums and public elections, and indirectly through the legislative, executive and judicial bodies and the elected local councils";

(b) Article 39 of the Constitution: "Citizens throughout the Republic shall have the right to organize themselves politically and professionally and to form scientific, cultural, social and national organizations and federations which serve the aims of the Constitution, provided that such organization does not contravene the provisions of the Constitution. The State shall guarantee this right, adopt all the measures needed to enable citizens to exercise it, and safeguard all the freedoms of political, trade-union, cultural, scientific and social institutions and organizations";

(c) Article 3 of the Political Parties and Organizations Act No. 66 of 1991 stipulates that: "In accordance with the provisions of article 39 of the Constitution of the Republic of Yemen, the constitutionally recognized public freedoms, including political and party pluralism, shall be regarded as a right and a pillar of the socio-political system of the Republic of Yemen. These rights shall not be withdrawn or restricted, nor shall citizens be in any way impeded in their free exercise thereof";

(d) Article 5 of the same Act stipulates that: "Yemenis have the right to form political parties and organizations and to belong voluntarily to any political party or organization in the manner provided for in the Constitution and the provisions of this Act";

(e) Article 9, paragraph (d), of the said Act prohibits any party or organization from incorporating in its statutes any conditions of membership based on discrimination on grounds of sex, colour, origin, language, occupation or social status.

105. With regard to electoral rights, the General Electoral Act No. 41 of 1992 accords every male and female Yemeni the right to vote and stand as a candidate in elections. Article 3 of this Act stipulates that: "Every citizen who has reached the age of 18 Gregorian years shall enjoy the right to vote. This does not apply to naturalized persons who have not held Yemeni nationality for the full legal period specified in the Nationality Act".

106. In accordance with article 5 of the Act: "The Higher Electoral Committee shall take steps to encourage women to exercise their electoral rights and form women's committees to register and record the names of female voters on the electoral lists and establish their identity when they cast their votes at the polling centres established in each electoral constituency".

107. Under article 51 of this Act: "Every citizen whose name is entered on the electoral list in the constituency in which he is resident for electoral purposes shall have the right to stand as a candidate therein, provided that he meets the following conditions: (a) He must be a Yemeni citizen; (b) He must be at least 25 years of age; (c) He must be literate; (d) He must be of good conduct and moral standing".

108. The manner in which the electoral process is conducted is specified in article 50 of the above-mentioned Electoral Act, which stipulates that: "Elections shall be held by secret ballot on a basis of universal, free, direct and equal suffrage".

109. Every male and female Yemeni citizen has a guaranteed and equal right of access to public service. Such posts are filled, at all levels, in accordance with the principle of equality of opportunity, as stipulated in article 19 of the Constitution ("The State shall guarantee equal political, economic, social and cultural opportunities for all citizens and shall promulgate legislation to that end").

110. Under article 20 of the Constitution: "Public service is a duty and an honour for the staff engaged therein who, in the discharge of their duties, must seek to further the public interest and serve the people. The terms and conditions of public service and the rights and duties of the staff engaged therein shall be specified in a legislative enactment".

111. Article 12, paragraph (c), of the Civil Service Act No. 19 of 1991 stipulates that: "The Civil Service shall be staffed in accordance with the principle of equality of opportunity and equal rights for all citizens, without any discrimination. The State shall ensure that the application of this principle is monitored".

Article 26

112. With regard to the equality of all persons before the law, article 27 of the Constitution stipulates that all persons are equal before the law in regard to their rights and duties. Reference has already been made to article 27 of the Constitution in part II, paragraph 2, of this report.

Article 27

113. With regard to the rights of persons belonging to ethnic, religious or linguistic minorities, we wish to point out that, in Yemen, no person is denied the right to practise his own religion or to use his own language. Yemenis are followers of the Islamic faith and their official language is Arabic. However, there is a Jewish minority in Yemen which retains its own religion and language and preserves its own culture. The members of this minority are not denied the right referred to in this article, since they are Yemeni citizens whose enjoyment of this right is guaranteed by the Constitution.